

Syllabus

IN THE MATTER OF
THE BOLTA COMPANY AND NEW YORK MERCHANDISE
COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 4754. Complaint, Apr. 4, 1945¹—Decision, July 3, 1947

The tariff laws of the United States require that articles of foreign origin, when imported into the United States, be marked in such manner as to indicate to the ultimate purchaser the name in English of the country of origin, and a substantial portion of the purchasing public has become familiar with the fact that imported articles customarily bear a mark indicating the country of origin and is accustomed to look for such marks, and when no such mark appears upon an article offered for sale, assume that it is produced in the United States by a domestic manufacturer.

There is now, and for a number of years last past has been, among members of the buying and consuming public, including purchasers of sunglasses, a substantial preference for products of domestic manufacture or origin as compared with those of Japanese or other foreign origin, and, in fact, sunglasses with lenses of Japanese origin would recently have been practically unsalable with the marks of Japanese origin thereon or with disclosure to the public of their origin.

Where a corporation engaged in the manufacture of plastic articles, including frames for sunglasses, and in the interstate sale and distribution of completed sunglasses made with domestic and imported lenses, and in purchasing from a New York dealer quantities of sunglass lenses which had been imported by the latter from Japan and which, when imported, bore pasted labels or stickers designating the country of origin, and in purchasing also from another seller a relatively small quantity of similarly marked lenses made in and imported from other foreign countries, and in placing in its sunglass frames such lenses, from which, as the result of a cleaning process, assertedly necessary, aforesaid labels showing foreign origin had been removed—

(a) Sold said completed sunglasses to said New York dealer and a few other purchasers, with no label or other marks thereon indicating the country of origin of the lenses, which, in some cases, were mounted on display cards which bore the legend "Made in U. S. A.," and in others were on cards or in cartons which did not disclose their foreign origin; and

Where said New York dealer, while it was selling Japanese lenses to said corporation and purchasing completed sunglasses therefrom, and knew or had good and sufficient reason to know that many of such sunglasses contained Japanese lenses—

(b) Sold said sunglasses—in which such imported lenses were completed products and required no processing other than insertion in the frames—without any disclosure of foreign origin and mounted and containered as above set forth; and distributed catalogs containing illustrations of said products on display cards bearing the statement "Made in U. S. A.";

With capacity and tendency to mislead and deceive members of the purchasing

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public into erroneous belief that such sunglasses and the important parts thereof were of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief, and with the result of thereby placing in the hands of retailers and resellers a means by which to mislead and deceive members of the purchasing public into such false and erroneous belief:

Held, That such acts and practices were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Clyde M. Hadley* and *Mr. John L. Hornor*, trial examiners.

Mr. B. G. Wilson for the Commission.

Mr. James W. Bevans, of New York City, for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Bolta Co., a corporation, and New York Merchandise Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Bolta Co. is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts with its office and principal place of business located at Lawrence, Mass. Said respondent is now and for several years last past has been engaged in the manufacture of plastic articles, including plastic frames for sunglasses made of domestic and imported lenses and in the sale and distribution of sunglasses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent New York Merchandise Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 32 West Twenty-third Street in the city of New York, State of New York. Said respondent is now and for several years last past has been engaged in the wholesale distribution and sale of domestic and imported merchandise of various kinds including lenses for sunglasses and sunglasses in commerce among and between the various States of the United States and in the District of Columbia.

Respondents cause and have caused their merchandise, when sold, to be shipped from their respective places of business located in the

State of New York and in the State of Massachusetts to purchasers thereof located in various other States of the United States and in the District of Columbia.

The said respondents maintain and at all times mentioned herein have maintained a course of trade in said merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent the Bolta Co., in connection with the sale and distribution of sunglasses purchases large quantities of lenses imported from Japan from respondent New York Merchandise Co., Inc. At the time of importation into the United States and at the time respondent the Bolta Co. receives said lenses from respondent New York Merchandise Co., Inc., they have been and are all labeled or marked with the word or words "Japan" or "Made in Japan" indicating that the country of origin is Japan. Upon receipt of said lenses as aforesaid respondent the Bolta Co. assembled said imported lenses into domestically made plastic frames so that they become part of completed sunglasses.

After such assembly and processing into completed form the labels bearing the word or words "Japan" or "Made in Japan" have been removed from the lenses and at no place on the finished sunglasses is it shown that the lenses are of foreign origin. The completed sunglasses containing the lenses imported from Japan with the labels removed are sold and shipped to the order of respondent New York Merchandise Co., Inc., as well as to other purchasers. Respondent New York Merchandise Co., Inc., has furnished respondent the Bolta Co. with display cards on which finished sunglasses containing lenses imported from Japan are placed before shipping, which cards contain the legend "Made in U. S. A." Some of the display cards contain 1 dozen sunglasses each and some contain only a single sunglass.

No disclosure is made or has been made by either respondent of the country of foreign origin of the lenses used in the manufacture of said sunglasses. Respondent New York Merchandise Co., Inc., has distributed catalogs among purchasers and prospective purchasers located in various States of the United States in which catalogs contain certain of respondent's sunglasses composed of lenses imported from Japan are illustrated on display cards which contain the words "Made in U. S. A."

PAR. 4. There is a well-established practice among merchandisers generally to mark or label products of foreign origin, and their containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by the United

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states tariff and customs law. By reason thereof, a substantial portion of the buying and consuming public has come to rely, and now relies, upon such labeling or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, including sunglasses. When products composed in whole or in substantial part of imported materials are offered for sale and sold in the channels of trade in commerce in the various States of the United States and in the District of Columbia, they are purchased and accepted as and for, and taken to be, products wholly of domestic manufacture and origin unless the same are labeled, marked or imprinted in a manner which informs purchasers that said products, or substantial parts thereof, are of foreign origin.

PAR. 5. There is now, and for several years last past has been, among members of the buying and consuming public, including purchasers and users of sunglasses, a substantial and subsisting preference for products which are wholly of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin or from products made in substantial part of materials or parts of foreign origin. During recent years and especially at the present time, there is a decided and overwhelming preference among American consumers for products of American manufacture and origin as distinguished from products wholly or partly of Japanese manufacture and origin.

PAR. 6. The practice of respondents, as aforesaid, of offering for sale, selling and distributing their sunglasses made of lenses of Japanese origin, without any labeling or marking to indicate to purchasers the Japanese origin of such lenses, has had, and has, the capacity and tendency to mislead purchasers and prospective purchasers into the false and erroneous belief that said sunglasses and all the parts thereof are wholly of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Furthermore, respondents' said practice places in the hands of uninformed retailers of respondents' sunglasses a means of instrumentality to mislead or deceive members of the buying and consuming public into the false and erroneous belief that said sunglasses, and all the parts thereof, are wholly of domestic origin, and thus into the purchase thereof in reliance upon such erroneous belief.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 24, 1942, issued and subsequently served its complaint upon respondent New York Merchandise Co., Inc., charging it with unfair and deceptive acts and practices in commerce in violation of the provisions of said act, and thereafter, on April 4, 1945, issued and subsequently served its amended and supplemental complaint upon the aforesaid respondent and respondent the Bolta Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said amended and supplemental complaint and the filing of respondents' answers thereto, testimony and other evidence (including by agreement that taken pursuant to the original complaint) were introduced before examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly received and filed in the office of the Commission. Thereafter, the proceeding came on for hearing before the Commission on said amended and supplemental complaint, the answers thereto, testimony and other evidence, reports of the trial examiners and exceptions thereto, briefs in support of and in opposition to the complaint, and the oral arguments of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent the Bolta Co. is a corporation organized and existing under the laws of the State of Massachusetts, with its office and principal place of business in Lawrence, Mass. It is now, and for a number of years last past has been, engaged in the manufacture of plastic articles, including, at least until some time in 1943, plastic frames for sunglasses, and in the sale and distribution of completed sunglasses made with domestic and imported lenses.

(b) Respondent New York Merchandise Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 32 West Twenty-third Street, New York, N. Y. It is now, and for a number of years last past has been, engaged in the sale and distribution of domestic and imported merchandise of various kinds, including sunglasses and lenses for sunglasses.

PAR. 2. In the course and conduct of their businesses as aforesaid,

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respondents have caused their sunglasses, when sold, to be shipped from their respective places of business, as aforesaid, to purchasers thereof located in States of the United States other than the State in which such shipments originated, and maintain and have maintained a course of trade in said merchandise in commerce among and between various States of the United States.

PAR. 3. At frequent intervals over a period of several years respondent the Bolta Co. has purchased quantities of sunglass lenses from respondent New York Merchandise Co., Inc., which the latter had imported from Japan, and also purchased from another seller a relatively small quantity of sunglass lenses made in and imported from other foreign countries. When imported into the United States the sunglass lenses which were made in Japan or other foreign countries were marked with pasted labels or stickers designating the country of origin. In the case of the Japanese lenses purchased from the New York Merchandise Co., Inc., such labels bore the word or words "Japan" or "Made in Japan," and such labels were on said lenses at the time they were sold and delivered by New York Merchandise Co., Inc., to the Bolta Co. In the process of placing the imported lenses in the sunglass frames manufactured by it, the Bolta Co. put the lenses through a cleaning process, said to be a necessary part of the assembling operation, and which resulted in the removal from the lenses of the labels showing the foreign country of origin. When the completed sunglasses containing lenses of foreign origin were sold to New York Merchandise Co., Inc., and a few other purchasers, there were no labels or other marks thereon indicating the country of origin of such lenses. Some of the sunglasses containing lenses of foreign manufacture were mounted by the Bolta Co. on display cards furnished to it by New York Merchandise Co., Inc., which display cards bore the legend "Made in U. S. A." Others of such sunglasses were mounted on display cards or placed in cartons which carried no statements of domestic manufacture but which did not disclose the foreign origin of the lenses contained in such sunglasses. In offering for sale and selling its aforesaid sunglasses, New York Merchandise Co., Inc., has distributed among purchasers and prospective purchasers catalogs containing illustrations of such sunglasses on display cards which show in legible form the statement "Made in U. S. A."

PAR. 4. The tariff laws of the United States require that articles of foreign origin, when imported into the United States, be marked in such manner as to indicate to the ultimate purchaser the English name of the country of origin. A substantial portion of the purchasing public has become familiar with the fact that imported articles cus-

tomarily bear a mark indicating the country of origin and is accustomed, when purchasing, to look for such marks of foreign origin. When no such mark appears upon an article offered for sale members of the purchasing public assume that it is produced in whole or in major part in the United States by a domestic manufacturer. There is now, and for a number of years last past has been, among members of the buying and consuming public, including purchasers of sunglasses, a substantial preference for products of domestic manufacture or origin as compared with those of Japanese or other foreign origin. In fact, during a part of the period in which respondents were selling sunglasses with lenses of Japanese origin such sunglasses would have been practically unsalable to members of the purchasing public had not the marks of Japanese origin been removed or if there had been any disclosure to the public of the origin of the lenses.

PAR. 5. During the time that respondent New York Merchandise Co., Inc., was selling imported sunglass lenses of Japanese origin to respondent the Bolta Co. and concurrently purchasing from said company completed sunglasses, it knew, or had good and sufficient reason to know, that many of such sunglasses contained lenses of Japanese manufacture. Such lenses, when imported, were completed products insofar as their protective qualities are concerned and required no processing other than insertion in frames, and such lenses did not lose their identity in appearance or function and constituted the most important element of the completed sunglasses.

PAR. 6. The practices of respondents in offering for sale and selling sunglasses with lenses of Japanese or other foreign origin with the representation "Made in U. S. A.," or without any labeling or marking thereon to indicate to purchasers that said lenses are of Japanese or other foreign origin, had the capacity and tendency to mislead and deceive members of the purchasing public into the false and erroneous belief that such sunglasses and the important parts thereof were of domestic manufacture and origin, and into the purchase thereof in reliance upon such erroneous belief. Respondents thus placed in the hands of retailers and resellers of such products a means by which to mislead and deceive members of the purchasing public into said false and erroneous belief.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

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ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answers of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before examiners of the Commission theretofore duly designated by it, reports of the trial examiners, exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondents the Bolta Co., a corporation, and New York Merchandise Co. Inc., a corporation, their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of sunglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling, separately or as a part of completed sunglasses, sunglass lenses which are imported from any foreign country without affirmatively disclosing thereon or in immediate connection therewith such foreign origin.

2. Representing in any manner that sunglass lenses of foreign manufacture, whether or not they are mounted in sunglass frames, are of domestic manufacture.

It is ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason not participating.

Syllabus

IN THE MATTER OF

AMMIEL F. DECKER AND MABLE P. DECKER TRADING
AND DOING BUSINESS AS DECKER PRODUCTS COM-
PANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5097. Complaint, Dec. 11, 1943—Decision, July 3, 1947

The term "back pressure" as applied to an automobile engine means the resistance offered to the flow of the exhaust gases as they pass through the muffler and exhaust pipe, and a part of the power produced by the engine must be used to overcome said resistance, i. e., to expel such gases.

Where two individuals engaged in the interstate sale and distribution of a mechanical device which was designated by them as "Vacudex" and designed to be attached to the end of the exhaust pipe or tail pipe of automobiles and trucks, and which was based upon the theory that, by eliminating or reducing back pressure, said device released for the primary purpose of propelling the automobile the engine power otherwise used to overcome back pressure resistance; through advertisements, by radio broadcasts, and newspapers, magazines, circulars and other advertising material—

Represented, directly or by implication, that their device saved gasoline and oil; increased the power of the motor and caused it to give better performance; drew carbon, oil, and moisture from the muffler and eliminated back pressure; reduced the vibration of the motor; gave the motor greater acceleration and caused it to run more smoothly and more quietly; and saved tires;

The facts being, as established by the evidence including results of tests by the National Bureau of Standards and the testimony of the Bureau expert on automotive engines, that their said device would not eliminate or reduce back pressure, and was incapable of accomplishing the results claimed for it as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which might be accomplished through use of said device, and thereby cause it to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

In a proceeding in which there was at issue the correctness of respondent sellers' theory that their device, for attachment to the end of the exhaust pipe or tail pipe of automobiles and trucks, would eliminate or reduce back pressure, and thus release a part of the engine's power, otherwise expended for said purpose, for the primary purpose of propelling the automobile and thereby result in the benefits claimed therefor by them, including a saving in gasoline or oil, an increase in the power of the motor, better motor performance,